

## **II. REMARKS**

Applicant offers the following remarks in response to the Office Action dated May 5, 2009.

### **A. STATUS SUMMARY**

Claims 1-22 and 25-35 are pending in the present application. Claim 3 has been cancelled. Accordingly, claims 1-2, 4-22 and 25-35 remain pending.

In this Amendment, Applicant has amended claims 1, 2, 4, 6, 9, 16, 19-22, 25, 27-29, 31-35 and cancelled claim 3 from further consideration in this application. Applicant is not conceding that the subject matter encompassed by claims 1, 2, 4, 6, 9, 16, 19-22, 25, 27-29, 31-35 and 3 prior to this Amendment is not patentable over the art cited by the Examiner. Claims 1, 2, 4, 6, 9, 16, 19-22, 25, 27-29, 31-35 were amended and claim 3 was cancelled in this Amendment solely to facilitate expeditious prosecution of the present application. Applicant respectfully reserves the right to pursue claims, including the subject matter encompassed by claims 1, 2, 4, 6, 9, 16, 19-22, 25, 27-29, 31-35 and 3 as presented prior to this Amendment and additional claims in one or more continuing applications.

### **B. CLAIM OBJECTIONS**

Claim 1 was objected to due to grammatical informality. Claim 22 was objected to due to grammatical indefiniteness. Claim 16 was objected to due to a typographical error.

Claims 1, 22, and 16 have been amended to correct the respective and additional typographical errors. No new matter is believed added by these amendments. Applicant respectfully requests that the claim objections be withdrawn.

**C. SPECIFICATION OBJECTION**

The Specification was objected to as allegedly not explicitly mentioning code instructions embodied in a computer readable media. However, Applicant notes that “original claims constitute their own description.” MPEP 2163, I, citing *In re Koller*, 613 F.2d 819, 204 USPQ 702 (CCPA 1980). Further, “[i]t is now well accepted that a satisfactory description may be in the claims or any other portion of the originally filed specification.” *Id.*

Applicant respectfully submits that its claims 22-35 as originally filed provide sufficient description to satisfy the written description requirement, to show that Applicant was in possession of the claimed subject matter, and are directed to statutory subject matter. Further, the Specification contains description sufficient to show that Applicant was in possession of the claimed subject matter. For example, paragraph 0016 (as published) recites that “the invention may be embodied in software.” Applicant respectfully submits that a person of skill would understand based upon this teaching in Applicant’s Specification that an invention that is embodied in software may be embodied in a computer readable medium, as claimed. There is also support for object instantiation within the Specification. (See para. 0004, as published). Applicant respectfully submits that a person of skill would realize based upon this teaching in Applicant’s Specification that an instantiated object may be instantiated into a computer readable medium, as claimed.

As such, Applicant believes the claims as originally filed provide sufficient description to satisfy the written description requirement, to show that Applicant was in possession of the

claimed subject matter, and are directed to statutory subject matter. Applicant further believes that the Specification shows that Applicant was in possession of the claimed subject matter.

Applicant is willing to amend the Specification to add text if the Examiner would like text added to recite the claimed subject matter within the Specification. However, Applicant respectfully submits that the objection to the Specification should be withdrawn independently of any such amendment.

**D. CLAIM REJECTIONS – 35 U.S.C. § 112**

Claims 1-22 and 25-35 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. Applicant respectfully traverses this rejection.

However, to expedite prosecution, Applicant has amended claims 1, 2, 4, 6, 9, 16, 19, 20-22, 25, 27-29, and 31-35 to recite elements associated with a single device and responses to input selections made via a user of the claimed specially programmed computer, or that the claimed computer executable instructions cause the computing device to perform the respective actions, as appropriate for the given amendment. Claim 3 has been combined with claim 1. For example, with respect to claim 1, Applicant has amended claim 1 to recite, among other things, that receiving a selection, via an input device of the specially programmed computer, and that certain elements are drawn “in response to the received selection within the GUI using said specially programmed computer.”

The amendments are believed fully supported by the Specification and claims as filed, for example, as discussed above. Additional support may be found within paragraph 0025, which describes in relevant part, that “the invention can be implemented through a computer program

that presents a GUI to the application architect through which he can build an OED, such as by dragging and dropping elements from one or more pallets.” Applicant respectfully submits that a person of skill would recognize based upon Applicant’s teachings that dragging and dropping of elements would only be possible via receipt of user input selections by a computing device and subsequent processing of the received user input selections in response to those user input selections.

The Specification further describes that “for each of the buttons, the event is a single mouse click over the corresponding button” (See Specification, para. 0062, as published). As such, a person of skill would recognize based upon Applicant’s teachings that a computer program operating upon a computer may receive and interpret user input selections, such as via an input mouse device, and respond to those user input selections, as claimed. Accordingly, no new matter is believed added. It is further respectfully submitted that the Specification is enabling and that the inventor was in possession of the claimed subject matter at the time of filing.

Therefore, Applicant respectfully requests that the rejection under 35 U.S.C. § 112, first paragraph, be withdrawn.

**E. CLAIM REJECTIONS – 35 U.S.C. § 103**

Claims 1-2, 5-22, and 26-35 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over U.S. Patent No. 6,701,513 to Bailey (hereinafter “Bailey”) in view of U.S. Patent Application Publication No. 2003/0184580 to Kodosky et al. (hereinafter “Kodosky”). Applicant respectfully traverses.

For the Patent Office to combine references in an obviousness rejection, the Patent Office must first establish *prima facie* obviousness by showing where each and every element is taught or suggested in the combined references. MPEP § 2143.03. This is a fundamental to an analysis under the factual inquiries required by *Graham v. John Deere*, 383 U.S. 1 (Supreme Court, 1966), as a part of identification of the scope and content of the prior art. The Patent Office has failed to do so in the present rejection. At least one element is missing from the combination of references and the Patent Office has failed to provide any articulated reasoning as to why one of ordinary skill in the art would find the claims as a whole to be obvious in the absence of the claim features not present in the prior art. (See *In re Kahn*, 441 F.3d 977, 988 (CAFC, 2006), as explicitly endorsed by the Supreme Court). Such an analysis is required in order to satisfy the factual inquiry ascertaining the differences between the prior art and the claims at issue. Accordingly, the Patent Office has failed to establish *prima facie* obviousness and the present rejection should be withdrawn.

Regarding the rejection of independent claims 1 and 22, each claim has been amended as discussed above for clarity and antecedent basis. Claims 1 and 22 have also been amended to clarify that the “main object” is a main object of “a program.” The Patent Office admits that the Bailey reference does not disclose the claimed “main object.” (See Office Action dated May 5, 2009, page 8). The Patent Office then alleges that the Kodosky reference discloses Applicant’s claimed main object. However, upon review of the cited portions of the Kodosky reference, Applicant finds that the Kodosky reference is actually directed to distributed systems where multiple programs are depicted and a “main program” may be identified. As such, the disclosure

of the Kodosky reference is distinct from the claimed “main object of the logic of a program.” As such, the Patent Office has not identified the claimed “main object of the logic of a program within the cited combination of references and the rejection of independent claims 1 and 22 should be withdrawn for at least this reason.

Claim 22 additionally recites, among other things, “sixth computer executable instructions that cause the computing device to graphically denote the main object of the program in the diagram by drawing an additional symbol around the symbol corresponding to the main object of the program.” The Patent Office appears to have completely neglected this claimed subject matter in association with the rejection of claim 22. As such, the Patent Office appears to have failed to properly consider Applicant’s claimed subject matter. Accordingly, the rejection of claim 22 is deficient on its face for at least these reasons.

Applicant has amended claim 1 to include the subject matter of claim 3 for convenience. As such, deficiencies of the rejection of claim 3 will be discussed below to assist the Patent Office with a determination that claim 22 and claim 1, as amended, are allowable over the references as cited. It is noted that claim 1 recites as amended from claim 3, among other things, “graphically denoting, via the GUI, the symbol in the diagram corresponding to the main object of the program so as to distinguish it from other symbols in the diagram by drawing an additional symbol around the symbol corresponding to the main object of the program.”

The Patent Office alleges in association with its rejection of claim 3 that “Kodosky teaches . . . graphically denoting the symbol in the diagram corresponding to the main object so as to distinguish it from other symbols in the diagram . . . .” However, as discussed above, the

Kodosky reference is distinguishable from Applicant's claimed "main object of the logic of a program." Further, the Patent Office admits that the Bailey reference does not disclose the claimed "main object." (See Office Action dated May 5, 2009, page 8).

The Patent Office further admits that Bailey does not disclose drawing an additional symbol around the symbol corresponding to the main object. As such, for at least these reasons, the rejection of claim 22 and claim 1, as amended, are deficient.

The Patent Office attempts to fill this gap in the actual disclosure of the cited Bailey and Kodosky references by alleging that non-patent literature "Visio 2000 Standard Edition User Guide" by Visio Corporation (hereinafter "Visio") fills this gap. (See Office Action dated May 5, 2009, page 20). However, Applicant has reviewed the cited portions of the Visio reference and finds that the cited portions of the Visio reference actually disclose different subject matter. In contrast to the claimed "drawing an additional symbol around the symbol corresponding to the main object of the program," the cited portions of the Visio reference actually disclose using shape handles, moving and resizing shapes, and shape-to-shape connections. Applicant finds no teaching or disclosure of drawing an additional symbol around the symbol corresponding to the main object of the program, as claimed, within the cited portions of the Visio reference. As such, the allegations of the Patent Office constitute errors of fact regarding the scope and content of the cited references and the differences between the claimed subject matter and the actual disclosure of the cited references.

Based upon this analysis, the factual disclosure of the cited portion of the Bailey reference is different from that alleged by the Patent Office and distinct from Applicant's

claimed subject matter. The Patent Office's factual allegations regarding the disclosure of the cited portions of the cited references are believed to be in error. Further, the factual allegations regarding the differences between the claims and the cited references are also believed to be in error.

Additionally, the Kodosky reference and the Visio reference do not cure the admitted deficiencies of the Bailey reference, as admitted by the Patent Office. The Patent Office has not provided any articulated reasoning as to why a person of ordinary skill in the art would find the claims as a whole obvious in the absence of the claim features not present in the cited combination of references. Accordingly, the Patent Office's allegations of the factual disclosure of the Bailey reference in combination with the Kodosky and Visio references are in error and the rejection of claims 1 and 22 should be withdrawn for at least these additional reasons. Additionally, the Patent Office's legal conclusion of obviousness is also in error as at least being based upon erroneous factual allegations.

As such, the Office Action dated May 5, 2009, fails to identify multiple elements of claims 1 and 22 within the combination of the cited references. Accordingly, the Patent Office has failed to establish a *prima facie* case of obviousness and the rejection of claims 1 and 22 should be withdrawn for at least this reason. Applicant reserves the right to provide additional arguments against the combination of the Bailey reference with the Kodosky reference and the Visio reference in the future if needed.

Claims 2 and 5-21 depend, either directly or indirectly, from claim 1. Claims 26-35 depend, either directly or indirectly, from claim 22. Accordingly, the rejection of claims 2, 5-21,



and 26-35 should be withdrawn for at least the same reasons as the independent claims from which they depend. Applicant respectfully submits that claims 1-2, 5-22, and 26-35 are in condition for allowance and notice of the same is requested at the earliest possible date.

Claims 3, 4, and 25 were rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Bailey, in view of Kodosky, and further in view Visio. Applicant respectfully traverses.

The standards for establishing a *prima facie* case of obviousness have been set forth above. The Patent Office has not established a *prima facie* obviousness and the present rejection should be withdrawn.

As discussed above, claim 3 has been combined with claim 1 for convenience. Claim 4 depends from claim 1. Claim 25 depends from claim 22. Accordingly, the rejection of claims 4 and 25 should be withdrawn for at least the same reasons as claims 1 and 22, respectively.

Additionally, the Patent Office has not alleged that the Visio reference cures the deficiencies discussed above with respect to the combination of the Bailey and Kodosky references. Further, the Patent Office has not provided any articulated reasoning as to why a person of ordinary skill in the art would find the claims as a whole obvious in the absence of the claim features not present in the cited combination of references. Accordingly, for at least these additional reasons the rejection of claims 4 and 25 should be withdrawn. Applicant reserves the right to provide additional arguments against the combination of the Bailey reference with the Kodosky and Visio references in the future if needed. Applicant respectfully submits that claims 4 and 25 are in condition for allowance and notice of the same is requested at the earliest possible date.

The undersigned additionally notes that many distinctions exist between the cited references and the claims. However, in view of the deficiencies discussed above, further discussion is believed to be unnecessary at this time. Failure to address each point raised in the Office Action should accordingly not be viewed as accession to the Examiner's position or an admission of any sort.

Applicant respectfully submits that claims 1, 2, 4-22 and 25-35 are in condition for allowance and notice of the same is requested at the earliest possible date. Applicant reserves the right to provide additional arguments against the rejection of these claims in the future if needed. In view of the above, reconsideration and allowance are respectfully requested.

### III. CONCLUSION

In light of the above Amendments and Remarks, it is respectfully submitted that the present application is now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above Remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Office Action.

Although it is believed that no fees are due, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Deposit Account No. 09-0461.

Respectfully submitted,

Lee Law, PLLC

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